

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

— — —

4 STATE OF OHIO, :
5 Plaintiff. :
6 vs. :Case Number B1003262
7 RUBEN JORDAN, :Appeal Number C1100833
8 Defendant. :Volume III of X

TRANSCRIPT OF PROCEEDINGS

— — —

L3 APPEARANCES:

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19
20 BE IT REMEMBERED that upon the Jury
21 Trial of this cause, on January 13, 2011, before
22 the Honorable NADINE L. ALLEN, a judge of the
23 said court, the following proceedings were had,
24 to wit:

1	OFFICER BRENDON ROCK
2	Direct Examination Page 338, Line 6
2	Cross-Examination Page 348, Line 24
3	Redirect Examination Page 352, Line 16
3	DETECTIVE RON AVANT
4	Direct Examination Page 353, Line 23
4	Cross-Examination Page 362, Line 15
5	DETECTIVE KURT BALLMAN
6	Direct Examination Page 365, Line 5
6	Cross-Examination Page 389, Line 9
7	SERGEANT JEFFREY HUNT
8	Direct Examination Page 394, Line 23
8	Cross-Examination Page 402, Line 18
9	VICTOR DAVIS, JR.
10	Direct Examination Page 404, Line 6
10	Cross-Examination Page 417, Line 13
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1 AFTERNOON SESSION, January 13, 2011

2 THE COURT: Good afternoon,
3 everyone. I think we are ready for the
4 jury to come in, and we'll be able to
5 start.

6 MR. WHALEN: No, Your Honor,
7 defendant is not here.

8 THE COURT: And the defendant, we
9 do need him, too. All right. You guys,
10 I'm hearing now that the defendant was
11 not brought over today at all. He's in
12 the Justice Center and they're going to
13 have to get him dressed out, meaning he
14 has a right to change clothes and shower.
15 What does that mean?

16 DEPUTY: If you want him in street
17 clothes.

18 THE COURT: They want him in --

19 MR. WHALEN: Yes.

20 THE COURT: As the defendant.

21 DEPUTY: Then it will probably take
22 45 minutes maybe.

23 THE COURT: Okay. Wow. All right.

24 DEPUTY: I'll get him sent over.

25 THE COURT: We might as well take a

1 break until 1:30, and it won't take 45
2 minutes.

3 MR. TIEGER: Judge, I know
4 everybody's done it. It just seems to
5 happen all the time, so...

6 THE COURT: It just happens.

7 (Pause in proceedings.)

8 (The jury entering the courtroom at
9 1:35 p.m.)

10 THE COURT: You may be seated.
11 Good afternoon, ladies and gentlemen of
12 the jury. I thank you for coming back
13 today again, being timely and prompt
14 today. We are going to resume today.
15 And what we are going to have next your
16 jury instructions. Preliminary so that
17 you can listen to this evidence and be
18 able to follow and understand what is
19 happening in this procedure, because many
20 of you are in your first week and some of
21 you are strange to juror service.

22 And following that, we will have
23 opening statements of counsel and the
24 State will then begin to present some of
25 its evidence today. That's what we will

1 be doing today.

2 So, I'm going to again explain some
3 of the procedures here today. Jury
4 service may be strange to some of you so
5 a short explanation is in order. Those
6 who participate in a trial must do so in
7 accordance with established rules. That
8 is true of the witnesses, the lawyers and
9 the judge, and it is equally true of your
10 part as jurors.

11 The lawyers present evidence
12 according to the rules. The Judge
13 enforces the rules and determines what
14 evidence may be admitted. You will be
15 the sole judges of the facts, the
16 credibility of the witnesses and the
17 weight to be given to the testimony.

18 Later, the Court will instruct you
19 regarding the law and you will apply the
20 law to the facts. It is your sworn duty
21 to accept the law as given to you by the
22 Court. The procedure for the trial is a
23 as follows: First counsel outline what
24 they expect their evidence will be.

25 These opening statements are not

1 evidence. They are a preview of the
2 claims of each party designed to help you
3 follow the evidence as it is presented.

4 Then the State offers its evidence. The
5 defendant may, but need not, offer
6 evidence. If the defendant presents
7 evidence, the State may put on what is
8 called rebuttal evidence.

9 The trial concludes with the
10 arguments of counsel, the instructions of
11 law by the court and thereafter you
12 deliberate on your verdict. The State of
13 Ohio has the burden of proof, and the
14 defendant is presumed innocent until and
15 unless his guilt is established by proof
16 beyond a reasonable doubt.

17 The defendant must be acquitted or
18 found not guilty unless the State of Ohio
19 produces evidence which convinces you
20 beyond a reasonable doubt of each and
21 every essential element of the offense
22 charged in this case. I have used the
23 words "reasonable doubt". And at this
24 time I will define reasonable doubt.

25 Reasonable doubt is present when

1 after you have carefully considered and
2 compared all the evidence, you cannot say
3 you are firmly convinced of the truth of
4 the charge. Reasonable doubt is a doubt
5 based on common sense and logic and
6 reason. Reasonable doubt is not mere
7 possible doubt because everything
8 relating to human affairs or depending on
9 moral evidence is open to some possible
10 or imaginary doubt.

23 To weigh the evidence, you must
24 consider the credibility of all the
25 witnesses. And to do this you will apply

1 the tests of truthfulness which you apply
2 in your own daily lives. And many of you
3 might be thinking I didn't know I had
4 tests I applied, but whether you realize
5 it or not, when someone is telling you
6 about an incident that you did not
7 observe and did not see, you are
8 evaluating that evidence, that story,
9 that version based upon your internal
10 tests.

11 And later on, I will give you an
12 example of what those tests may be which
13 you may use, but you are not required to
14 use them. You may use your own tests
15 that is the kind of authority and
16 province that the jury does have to weigh
17 the credibility and to determine facts in
18 this case because many of the facts are
19 in dispute and that's why we are here.

20 You are not required to believe the
21 testimony of any witness simply because
22 it is given under oath. You may believe
23 the testimony -- you may believe or you
24 may disbelieve all or any part of the
25 testimony of any witness who testifies.

1 So you may believe half the sentence and
2 not the rest, or a portion and not all of
3 it. So you're not -- it's not an all or
4 nothing situation for you as jurors. It
5 is within your province to determine what
6 testimony to believe and what testimony
7 you do not want to believe.

8 The Court will permit note taking
9 by the jurors. And the taking of notes
10 may distract you from the evidence. I
11 will allow that, but I'm going to tell
12 you how it shall be done. The Court will
13 permit those jurors who desire to take
14 notes during the trial to do so. No
15 juror is required to takes note. The
16 taking of note is entirely a matter of
17 personal choice.

18 The fact that the note taken by a
19 juror supports that juror's recollection
20 in no way makes that juror's memory more
21 reliable than that of the other jurors
22 who do not take notes. Do not let the
23 taking of notes divert your attention
24 from what's being said or is happening in
25 the courtroom during the trial.

1 Some persons believe that taking
2 notes is not helpful because it may
3 distract the person's attention and
4 interfere with hearing all the evidence.
5 All notes are confidential and for the
6 consideration of the jury only. So I
7 will not review them, the bailiff, the
8 parties and the litigants, the court
9 reporter and the attorneys will not be
10 reviewing them. Each note-taker will
11 leave that note with the bailiff during
12 all recesses and until deliberations
13 begin.

14 At that time you will be allowed to
15 take your notes to the jury room. All
16 notes will be returned to the bailiff for
17 destruction at the time that the jury is
18 discharged.

19 So at the conclusion of these
20 instructions, I want to ask you to raise
21 your hands for those who would like to
22 take notes.

23 The Court will permit jurors to
24 propose questions for the Court to ask of
25 the witnesses. If you have a question,

1 wait until the end of questioning of the
2 witness by the attorneys. When the
3 questioning is finished, I will ask if
4 you have any questions, which we may or
5 may not answer that question because it
6 is the function, obligation and duty of
7 the prosecution and the defense to put on
8 before you the evidence that you need to
9 be considering. So you may be asking a
10 question which I will not allow any party
11 to ask.

12 So for that reason, I may be
13 denying that question and it may not be
14 asked. And I will be asking counsel how
15 they feel about that particular question
16 unless you object now.

17 MR. TIEGER: Could we approach,
18 Judge?

19 THE COURT: Okay. We didn't
20 discuss this before this began, so we'll
21 talk about it now.

22 (Unreported sidebar conference.)

23 THE COURT: All right. And both
24 sides have requested, and I agree with
25 that, because this is a serious matter

1 and they have spent a considerable amount
2 of time in preparation, we are not going
3 to allow the jurors to ask questions
4 today. You may ask questions at the end
5 about evidence you heard when the jury is
6 deliberating. The jury may ask a
7 question during deliberation at the
8 conclusion of the case.

9 It is important that you remain
10 fair and attentive throughout the trial.
11 Do not discuss this case among yourselves
12 or with anyone else. Do not permit
13 anyone to discuss it with you or in your
14 presence. Do not form or express an
15 opinion on this case until it is finally
16 submitted to you. More difficult to
17 understand is that you may not discuss
18 this case among yourselves until it is
19 finally submitted to you. You will
20 receive the opening statements this
21 morning -- this afternoon, some evidence.
22 Later on, you'll hear more evidence that
23 will take us into next week.

24 The arguments will follow and the
25 law, in this order. It would be unfair

1 for you discuss the case among yourselves
2 before you receive everything necessary
3 for your deliberations, and you must
4 continue to explain this rule to your
5 family and friends.

6 Since this matter is expected to
7 continue more than one day, do not talk
8 with the attorneys, the participants or
9 the witnesses during the trial, and
10 likewise the participants in the trial
11 must not talk with you.

12 If anyone should attempt to discuss
13 the case with you, please immediately
14 report the incident to the bailiff. You
15 may not investigate or attempt to obtain
16 additional information on this case
17 outside the courtroom. It is highly
18 improper for any one of you to attempt to
19 do this. There was a jury view, and you
20 did observe some matters which were
21 pointed out to you, and so that means you
22 are not permitted to go back and get any
23 further additional information on this
24 case outside of the courtroom.

25 You are instructed not to read,

1 view or listen to any report in the
2 newspaper, radio or television on the
3 subject of this trial. Do not permit
4 anyone to read or comment upon news
5 reports to you or in your presence. News
6 reporters are in the trial throughout
7 this trial, but they are -- their
8 impressions are incomplete and at times
9 inaccurate, and this is standard jury
10 instructions. You must consider and
11 decide this case only upon the evidence
12 received in the courtroom. If you should
13 acquire information from an outside
14 source, you must report it to the other
15 jurors, and you must disregard it in your
16 deliberations.

17 In addition, you should report the
18 outside source of information to the
19 bailiff or to the Court at the first
20 opportunity. To be fair, I caution you
21 now you may be questioned later by the
22 Court to find out if you did read or view
23 or listen to any report concerning this
24 trial.

25 When your juror duty is completed,

1 of course you are released from this
2 obligation to remain silent or to not
3 have any comments or not to read or
4 investigate or speak on this matter.

5 If during the trial you have a
6 personal problem, please explain it to
7 the bailiff and we will resolve that
8 matter before we commence again with the
9 trial. At this time we are ready to
10 commence with the case in chief of the
11 prosecution. Is the prosecution ready
12 for opening statements?

13 MS. SHANAHAN: We are, Your Honor.

14 THE COURT: Okay. At this time,
15 would you raise your hand for those who
16 would like to take notes. Everybody want
17 to take notes? Those who do not want to
18 take notes? There is one hand. So
19 everybody but -- there are two who do not
20 want to take notes.

21 Number 12, Michael Burck and David
22 Burck. The Burcks, non-brothers, do not
23 wish to take notes.

24 ALTERNATE JUROR KORB: No. I do.

25 THE COURT: You do. You are my

1 alternate.

2 ALTERNATE JUROR KORB: Yes.

3 THE COURT: You're Mr. Korb, the
4 alternate juror. Okay. Thank you.

5 Ms. Shanahan, everybody has
6 received their notes and papers. All
7 right. You may commence.

8 MS. SHANAHAN: Thank you, Your
9 Honor. Good afternoon, ladies and
10 gentlemen. On behalf of the State and
11 the defense, I would like to thank you
12 for your time and attention in this
13 important matter. It's very important
14 that you do pay attention throughout the
15 course of this trial so that both the
16 State and the defense get a fair shake.

17 Ladies and gentlemen, what brought
18 us here today is the filing of an
19 indictment. It's the document that lets
20 the defendant know what he's being
21 charged with. For that reason, I'm going
22 to read to you the indictment.

23 In the matter of the State of Ohio
24 against Ruben Jordan, Case B1003262, in
25 the Court of Common Pleas, Hamilton

1 County, Ohio, Grand Jury term 2010, the
2 Grand Jurors of the County of Hamilton in
3 the name and by the authority of the
4 State of Ohio upon their oaths do find
5 and present that Ruben Jordan on or about
6 the 31st day of October, in the year
7 2008, in Hamilton County, Ohio, did
8 purposely and with prior calculation and
9 design cause the death of Victor Davis,
10 in violation of Section 2903.01(A) of the
11 Ohio Revised Code, and against the peace
12 and dignity of the State of Ohio.

25 || But gradually this horsing around

1 became serious because Brian kept saying
2 stop it, quit it, get lost. And Kareem
3 wouldn't back off and he kept coming at
4 Brian. And finally Brian, frustrated,
5 took his Subway sandwich and smacked
6 Kareem in the head with it, food went
7 down the front of Kareem's white t-shirt.
8 It was a meatball sandwich. There was
9 spaghetti sauce all over him and he was
10 mad. He turned, he walked towards the
11 vacant lot at the corner of Republic and
12 Elder removing the white t-shirt and
13 discarding it and going around the
14 corner.

1 But Kareem pulled the safety off
2 the gun, fired multiple more shots as
3 Brian ran, killing him there at 20 West
4 Elder. He came to rest right at 19 West
5 Elder. Victor Davis ran from the scene
6 but he circled around quickly and was
7 watching his friend, who was lying there
8 bleeding, die and he called 911.

9 Kareem Gilbert knew that Victor
10 Davis knew that he had killed Brian
11 Austin. And within a few days things
12 went downhill for Victor Davis. Victor
13 lived with his sister right there in the
14 same building where Kareem Gilbert lived
15 with his mother, where his brother would
16 be around. Everybody knew each other,
17 but everybody knew how the streets
18 worked. And Victor Davis knew that he
19 had to get out of there if he was going
20 to be safe. But his sister didn't want
21 to leave her apartment, and Victor Davis
22 wasn't going to leave his sister down
23 there, so Victor wouldn't leave.

24 And he, essentially, became a
25 sitting duck. What happened in the

1 following days was the police were on the
2 search for Kareem Gilbert. Ultimately,
3 Victor Davis was seen that night at the
4 scene having a heated discussion with
5 Shawn Gilbert, and the police thought
6 that odd, and then somebody came and
7 said, hey, that guy, that Victor Davis,
8 he was with Brian when he was killed.

9 So the police took Victor Davis
10 from the scene, took him down to homicide
11 and questioned him. But Victor said, I
12 don't know who the guy was, I have seen
13 him in the neighborhood, he just came up
14 and shot him. He just came up and shot
15 Brian.

16 ultimately, within two days,
17 Victor's conscience told him what he
18 needed to do even though he's for the
19 streets and he knew that he was a sitting
20 duck. And he called his friend, Ron
21 Avant, Detective Ron Avant, who he had
22 gone to high school with and just
23 happened to run into a few months before.
24 And he said, Ron, I know who did it. I
25 wasn't totally forthright with the police

1 the night of the murder, but I know who
2 killed Brian and I need to tell them.

3 So on October 18th, Victor Davis
4 went back to homicide and he told the
5 whole story. He told the whole story
6 about Kareem Gilbert. He told the whole
7 story about how he lives there and how he
8 was afraid. And how he knew that
9 something was going to happen and this
10 needed to stop. This was ridiculous.

1 attorney because he had murdered
2 somebody, and when I came back he was
3 gone, I don't know where he is.

4 October 31st, Halloween night,
5 approximately 11:30 at night Victor Davis
6 came home. He parked his car on the west
7 side of Republic Street. He got out of
8 his car and he never even made it to the
9 breezeway door because Ruben Jordan
10 walked up, unsuspecting, unarmed Victor
11 Davis is there, and Ruben Jordan guns him
12 down and leaves him lying in the gutter.
13 And that's where he died on October 31st
14 at approximately 11:30 at night.

15 Victor was alone but people were
16 watching. And there were people in the
17 area who saw a bald man standing over
18 Victor Davis's body. There were people
19 in the area that saw what happened. It
20 was logical however for the police to
21 look at Kareem, certainly there was a
22 motive. Everybody knew Kareem killed
23 Brian Austin, and Victor Davis was the
24 only eyewitness to that murder, and
25 Victor Davis talked to the cops. And

1 everybody knows what happens when you
2 talk to the police and you're an
3 eyewitness. So everybody assumed it was
4 Kareem Gilbert. And Kareem was still on
5 the run.

6 ultimately, Kareem was caught on
7 December 31st of 2008, almost two
8 months -- exactly two months to the date
9 after Victor's murder, and he was charged
10 with both Brian Austin's murder and
11 Victor Davis's murder because there
12 seemed to be plenty of proof that he
13 would be the logical person. Ultimately
14 his t-shirt that was left there at the
15 scene came back with his DNA, spaghetti
16 sauce down the front. It was logical he
17 killed the one eyewitness to that murder.
18 However, in early 2009, evidentiary
19 things started to come to light and they
20 weren't adding up.

21 Ladies and gentlemen, the testimony
22 and the evidence will show that at the
23 crime scene for Davis's murder, the
24 killer left something behind. He spit a
25 rather large amount of phlegm. And when

1 the police arrived on the scene, within
2 three minutes, within three minutes the
3 police were on Davis's murder scene. You
4 will hear their testimony that it appears
5 to be fresh spittle on the ground. There
6 was still bubbles in it so they collected
7 it as evidence. We sent it to the lab
8 and, ultimately, it's not Kareem
9 Gilbert's. That's a problem. It's fresh
10 spit five feet from Davis's body and it's
11 not Kareem Gilbert's.

1 Ruben Jordan's. And everybody kind of
2 stopped and went huh.

3 And slowly, ladies and gentlemen,
4 the tables began to turn. While the spit
5 was being tested by our local lab for
6 confirmation, Ruben Jordan appeared on
7 the news. And there is a man named
8 Kenneth Heard, and Kenneth Heard knows
9 Ruben Jordan.

10 Ladies and gentlemen, you'll hear
11 his testimony. Kenneth Heard was Ruben
12 Jordan's drug dealer. That was through
13 2008 and 2009. But in April of 2009,
14 while Kareem Gilbert is sitting in the
15 Hamilton County Justice Center awaiting
16 trial for the murder of Brian Austin and
17 Victor Davis, Kenneth Heard had been shot
18 and decided it was time to leave town.
19 He left town, is trying to turn his life
20 around.

21 And he talked to a police officer
22 here, and he said I have information on a
23 murder. I have information on a murder.
24 But he didn't know Ruben Jordan's real
25 name. When he told the police officer,

1 that actually happened in early in 2009,
2 he didn't know his name. So he tells the
3 police officer it's a murder of a guy,
4 very vague. And the police officer says
5 you have got to give me more, how am I
6 supposed -- their is a million unsolved
7 murders, how am I supposed to do this?
8 Kenneth Heard goes on his way, moves out
9 of town.

10 Ultimately, when Ruben Jordan
11 appears on the news, Kenneth Heard says
12 that's him, that's the guy that I was
13 dealing drugs to. And he calls up the
14 detective and says now let me tell you
15 what this guy Ruben Jordan, who I didn't
16 know his real name, what he told me, what
17 Ruben Jordan told Kenneth Heard in early
18 2009, is his son is awaiting trial for
19 the murder of Victor Davis, I'm the one
20 did it. Ruben Jordan told him, I'm
21 nervous, I'm worried my son is sitting in
22 jail for something that I did. I
23 committed that murder.

24 And Kenneth Heard said, why would
25 you do that, why would you let your son

1 go down? He said, well, but I had to do
2 it, I had to protect my son. This Victor
3 Davis was going to testify against my
4 son, so I killed him, I had to. And
5 Kenneth Heard persisted about why, why
6 would you let him go down for that? And
7 that is the end of the exchange.

8 This all starts to come to light
9 now in early 2010. Kenneth Heard had
10 tried to tell the police in '09 but he
11 just didn't have a name. But now we have
12 a name and we have fresh spit from the
13 scene, and it's all pointing to Ruben
14 Jordan.

15 Still the case went all the way to
16 the day of trial before everything was
17 put together against Kareem Gilbert. And
18 there we are ready to go, it's go time
19 and Kareem Gilbert is going to go down
20 for the murder of Victor Davis even
21 though his father committed that murder.
22 And it was at that point that Kareem
23 himself said, hold on, hold on a minute,
24 my dad has been telling me to just go to
25 trial, this is going to get taken care

1 of, but I'm not going down for two
2 murders. I did one, I murdered Brian
3 Austin. And that's the first time he
4 admitted that. But he said I murdered
5 Brian Austin but I didn't murder Victor
6 Davis, my father did.

7 And, ladies and gentlemen, here we
8 are. Everything was done properly
9 throughout every point in this case. It
10 just so happened it took a while for all
11 the ducks to line up and, unfortunately,
12 there was one sitting duck that went down
13 all over somebody getting smacked with a
14 Subway sandwich.

15 Ladies and gentlemen, this is how
16 this case unfolded. This is the evidence
17 that is going to be presented to you.
18 You are going to hear testimony and
19 receive actual evidence. The State is
20 confident when you hear the whole story,
21 the entire story from beginning to end,
22 that you will return guilty verdicts
23 against Ruben Jordan for the murder of
24 Victor Davis. Thank you.

25 THE COURT: Thank you.

1 MR. WHALEN: Good afternoon. The
2 facts in this case will make it a great
3 mystery novel, but it doesn't make for a
4 very good criminal trial. What the
5 prosecutor just laid out for you on many
6 points we agree with them and we're
7 probably not going to object or even
8 cross-examine some of the witnesses. But
9 the rest of the problem is that it
10 doesn't make any sense, and it certainly
11 doesn't prove that my client killed
12 anybody.

19 On October 16th of '08, Kareem
20 killed Brian Austin down on Republic
21 Street where you were yesterday. As a
22 result of a dispute that he had with
23 Victor Davis, he knew who the killer was,
24 told the police who it was and they began
25 looking for Kareem. Not only did he tell

1 them who it was, but he told his family
2 Kareem was going to kill me and he began
3 to lay the clothes out he wanted for his
4 funeral. He told his family how he
5 wanted his funeral conducted because he
6 knew he was a dead man.

7 On Halloween, October 31st, Kareem
8 came up to Victor and shot and killed him
9 on the street. Now, the witnesses are
10 going to tell you that no one actually
11 saw it, but they heard the shots. The
12 one witness you are going to hear from
13 today looked out his window and he told
14 the police that it was that Gilbert kid
15 that did it. They tell you that they
16 found fresh spit on the scene, and they
17 did. And they told you that the lab
18 tests are going to show that it belonged
19 to Ruben Jordan, it did. We are not
20 going to argue that point.

what they didn't tell you is that
Ruben Jordan has grandchildren living in
a building, and it was Halloween and he
had been down there that night for
Halloween with his grandchildren, not

1 knowing what his son was doing down
2 there.

3 Shawn has a brother -- I mean
4 Kareem has a brother Shawn. And
5 throughout the police investigation, they
6 were told that Kareem did it and they
7 were told that Kareem and his brother did
8 it. And they had that information
9 throughout this whole thing. But the
10 prosecutor told you about coming down to
11 the last minute, it did. They had this
12 Mr. Heard that came up and says that
13 Ruben told him that he did it. You're
14 going to find out that Mr. Heard doesn't
15 even really know who Ruben is. You're
16 going to find out in his statement also
17 he doesn't have his name right, he
18 doesn't have his identity. He told him
19 that Ruben is a man in his early 20s. He
20 has no idea who Ruben Jordan is.

21 And they had that information and
22 they have the spit. They ran off the
23 crimes that my client has gone to prison
24 for in the past, and we are not going to
25 hide that from you. They had his DNA.

1 When you go in prison, they take your
2 DNA. And they took his DNA and they had
3 DNA, and it took two years for them to
4 decide that it belonged to Ruben Jordan.

5 And then not only it took two
6 years, they have got Mr. Heard, they have
7 got the spittle and they're going to
8 trial, and they have got the witnesses
9 that were from -- that have testified or
10 had given them statements, and yet they
11 are at the day of trying Kareem Gilbert
12 for the murder of Victor Davis. This is
13 the state saying we got the killer, we
14 are going to trial and we are going to
15 convict him. And then the killer turns
16 around and says, oh, wait a minute, it
17 wasn't me, I didn't do that, my daddy did
18 it.

19 Now all the sudden this admitted
20 killer is all the sudden believable and
21 he's saying it was my daddy that did it.
22 And the state decided, well, we got the
23 wrong man. And they made a deal. They
24 dropped the murder of Victor Davis
25 against Kareem. He goes free of that

1 until he doesn't come in here and tell
2 you my daddy did it. And that's the
3 proof that they're going to tell you
4 rises to beyond a reasonable doubt. And
5 I'm going to tell you it doesn't. And I
6 believe your duty is to return a verdict
7 of not guilty. Thank you.

8 THE COURT: Anything further in
9 opening statements?

10 MS. SHANAHAN: No, Your Honor.
11 Thank you.

12 THE COURT: All right. You're
13 going to call your first witness, sir.

14 MR. TIEGER: Police Officer Rock.

15 THE COURT: Would you like to swear
16 all them, do a separation individually?

17 MR. TIEGER: Judge, I don't think
18 any witnesses are here, but we would ask
19 for a separation.

20 MR. WHALEN: We agree.

21 THE COURT: Are there -- are there
22 persons in this room who will be
23 testifying in the future? You don't have
24 any of your potential witnesses. Okay.

25 Then bring in the officer, and I will

1 also make a ruling on that.

2 MR. TIEGER: Police officer Rock.

3 THE COURT: While he's coming, if
4 there is anybody in the courtroom who has
5 a cell phone, it must be turned off. You
6 cannot text, cannot use either way. And
7 if it is seen, it will be seized, so put
8 it -- turn it off, please, and keep it
9 out of range and do not use it.

10 Officer, would you please raise
11 your right hand to be sworn?

12 OFFICER BRENDON ROCK,
13 having been first duly sworn, was examined and
14 testified as follows:

15 THE COURT: There is also a
16 separation of witnesses also. Anyone who
17 will be testifying, all witnesses
18 separated and must step out in the
19 hallway will be called in individually
20 and you cannot discuss your testimony. I
21 see two more people came in. Would all
22 attorneys turn around and tell me any of
23 these parties will be witnesses?

24 Additional people come in?

25 Mr. Whalen?

1 MR. TIEGER: No, Your Honor. No.

2 THE COURT: Did the defense look
3 there? Just witnesses. Just spectators.

4 MR. TIEGER: Victor Davis's family.

5 THE COURT: All right. Okay.

6 DIRECT EXAMINATION

7 BY MR. TIEGER:

8 Q. Good afternoon. Can you pull that
9 mike towards you, officer. Please tell us your
10 name and spell your last name.

11 A. Officer Brendon Rock, R-O-C-K.

12 Q. What's your occupation?

13 A. Police officer for the city of
14 Cincinnati.

15 Q. How long have you been a Cincinnati
16 police officer?

17 A. About a decade, sir.

18 Q. I'm going to direct your attention
19 to October of 2008, what area of town were you
20 working in at that point?

21 A. Over-the-Rhine.

22 Q. And we heard in jury voir dire one
23 of the jurors who's no longer a juror said she
24 recognized your name from the Fay Apartments or
25 District 3 area. Since October of 2008, have

1 you changed districts?

2 A. Yes, sir.

3 Q. And Over-the-Rhine, what district
4 is that in?

5 A. That's District 1.

6 Q. And how is that basically divided
7 up? There is different districts that
8 Cincinnati Police are assigned to?

9 A. Correct. There are five districts
10 in the city. District 1 includes
11 Over-the-Rhine, West End, Mt. Adams and
12 downtown.

13 Q. And how about the district you are
14 in now, District 3?

15 A. That's the west side of town,
16 Westwood, Price Hill, Saylor Park.

17 Q. I'm going to direct your attention,
18 Officer Rock, to 10/16 of 2008, early in the
19 morning of that day, around 1:05 in the morning,
20 were you on duty at that time?

21 A. Yes, sir.

22 Q. And were you in uniform in a marked
23 police car?

24 A. Yes, I was.

25 Q. Were you on routine patrol?

1 A. Yes.

2 Q. What is routine patrol?

3 A. Just patrolling in the vehicle
4 looking for crime, anything like that.

5 Q. And were you called to an area at
6 or about 22 West Elder?

7 A. Yes, sir.

8 Q. And could you describe what a radio
9 run or a dispatch is, officer Rock?

10 A. In this instance I believe someone
11 heard a gun fire or saw some sort of
12 disturbance, they called 911. I recall taking
13 that call and sent that to a dispatcher who then
14 calls us on the radio and advises us to respond
15 to the location. That's what happened that
16 night.

17 Q. And how does a dispatcher advise
18 you to respond to a certain area?

19 A. They give you the location and a
20 description of what is going on there, what the
21 caller told the call taker.

22 Q. And how did you hear that?

23 A. Over our radio.

24 Q. And do you have a radio on today?

25 A. Not right now, sir, no.

1 Q. Where is that normally kept?

2 A. The mouth piece is up on the collar
3 area and radio itself is down on the belt.

4 Q. And when you heard that, to go to
5 that area, how long did it take you to get to
6 that area?

7 A. I was not far at all. I mean, I
8 think I was actually in the area before the
9 dispatcher finished advising me to head to the
10 area.

11 Q. How long would it have taken you to
12 get to the call at the Elder and Republic Street
13 corner, so to speak?

14 A. I mean from where I was when the
15 initial run came out, ten, 15 seconds.

16 Q. And could you describe to the jury
17 what you saw when you got to that area?

18 A. I was driving, I believe, would
19 have been kind of east on Elder towards Vine
20 Street from Republic or Race Street. As I drove
21 up the street, I saw several individuals out,
22 one of whom appeared to be staggering somewhat
23 through the street. This individual reached the
24 south side of Elder Street and collapsed. I saw
25 several people milling about him in the general

1 area.

2 As other police officers began to
3 show up I started to try and push everyone back
4 to create room for fire personnel and secure the
5 crime scene.

6 Q. So, what you're -- what I'm
7 understanding is that you saw an individual
8 stumble, and then that individual fall.

9 A. That's correct.

10 Q. And was that individual going from
11 one side of -- from Elder Street to the other
12 side of Elder Street?

13 A. The general direction seems to be
14 from the north side of the street to the south
15 side of the street.

16 Q. And did you -- you saw some other
17 individuals in the area?

18 A. Yes, sir.

19 Q. Was there an individual in that
20 area that you later knew or became known to be a
21 gentleman by the name of Victor Davis?

22 A. Yes, sir.

23 Q. And where did you see that
24 individual, officer Rock?

25 A. He was one of the subjects I saw

1 right beside the victim after the victim fell to
2 the ground. And while I didn't know his name or
3 anything, as I took note of his general
4 appearance, observed him to be moments later
5 engaged in a heated conversation with another
6 subject, and then we came across him yet one
7 more time that night.

8 Q. Was there anything distinctive
9 about Victor Davis?

10 A. He was a larger man and had a full
11 set of dreadlocks.

12 Q. Okay. So is he somebody that you
13 would recognize or he was a distinctive looking
14 individual?

15 A. Yes, sir.

16 Q. And you said he was in some type of
17 conversation, or how would you describe -- did
18 you see him with somebody else right there at
19 the scene officially?

20 A. The first time I took note of him
21 he was there where the victim fell, and I
22 couldn't say that he was speaking with anyone in
23 particular.

24 Q. Okay.

25 A. Moments later I saw him talking to

1 another individual, or more to the point that
2 individual, I think, was talking to him in a
3 very animated manner.

4 Q. Okay. What happened next then at
5 the scene, Officer Rock? You have got somebody
6 stumbling and falling. Were people upset?

7 A. Yes.

8 Q. And what did you determine had
9 happened or how did you determine what had
10 happened?

11 A. Based on the radio run that I had
12 received about shots fired and whatnot, and
13 seeing this individual fall to the ground, I
14 assumed that he had most likely been shot.

15 Q. Okay. And did you look at or
16 approach the body at all?

17 A. Not really. Seconds after I got
18 there, two other officers showed up. I believe
19 one or both of those officers went more to the
20 body like I did. Like I said, I kind of headed
21 in the east and secured the crime scene area.

22 Q. And why is it important to secure a
23 crime scene?

24 A. Physical evidence on the scene can
25 be removed or destroyed or altered. It's

1 important to, again, let -- with an incident
2 like this, people want to congregate around the
3 body. But once the fire personnel get there,
4 they need space to work, so it's kind of a case
5 when you show up, it's important to kind of stop
6 that as soon as possible.

7 Q. So if there is potential evidence,
8 shell casings, physical evidence, that that
9 would be -- the integrity of that is preserved?

10 A. Yes, sir.

11 Q. And did you try to do that to the
12 best of your ability in terms of setting up a
13 perimeter or crime scene tape?

14 A. Yes, sir.

15 Q. And what is a perimeter or crime
16 scene tape?

17 A. Well, we use the yellow crime scene
18 tape. It establishes a perimeter, a wall inside
19 which we don't want pedestrians or even officers
20 or firefighters who aren't needed to enter and
21 leave. It's in this area that whatever evidence
22 there is we want to keep that there and keep it
23 as it is until the experts come to deal with it.

24 Q. And why is fire called in in a
25 situation like that, Officer Rock?

1 A. They are the medical personnel who
2 respond to situations like this.

3 Q. And is that one of the things that
4 either on a shooting they respond or you notify
5 fire right away to show up because somebody is
6 in urgent need of their care?

7 A. Yes.

8 Q. Did they respond to the scene?

9 A. Yes, they did.

10 Q. Did they get there quick?

11 A. Yes.

12 Q. Do you know if they had attended to
13 the body that had stumbled and fallen which
14 later turned out to be the body of Brian Austin?

15 A. They did.

16 Q. Were they able to do anything to
17 save his life?

18 A. Not really, no.

19 Q. He was basically dead there on the
20 street?

21 A. That's correct.

22 Q. Did homicide then come to the
23 scene?

24 A. Yes, sir.

25 Q. What happened next then at the

1 scene in terms of -- you had mentioned to the
2 jury, Officer Rock, that you had seen Mr. Davis
3 again and this other individual that he was in
4 an animated conversation with?

5 A. Yes, sir. After the crime scene
6 had kind of been established, the crime scene
7 tape was up, I was standing on one side of the
8 scene and there were several individuals
9 becoming very loud, somewhat disorderly. That's
10 not too unusual for a situation like this. But
11 one individual in particular stood out, he was
12 quite disorderly.

13 At one point I actually placed him
14 in handcuffs and threatened to arrest him and
15 remove him from the scene if he couldn't control
16 himself. This was the individual I had seen
17 earlier engaged in the conversation with
18 Mr. Davis.

19 Q. And did you determine that
20 individual's name?

21 A. Yes, I did, I wrote it down. It
22 was Shawn Gilbert.

23 Q. Was there anybody else at the scene
24 engaged in this animated or angry conversation
25 either with you or other officers?

1 A. The conversation between
2 Mr. Gilbert and Mr. Davis was just those two.
3 But once I had to deal with Mr. Gilbert later
4 on, his mother was out there along with several
5 neighbors, extended family members.

6 Q. At that point then, Officer Rock,
7 after you say you handcuffed Shawn Gilbert?

8 A. Yes, sir.

9 Q. And eventually let him go, you did
10 not arrest him?

11 A. That's correct. He calmed down and
12 promised to control himself and he was not
13 arrested.

14 Q. Did you let homicide then take over
15 the scene?

16 A. Yes, sir.

17 Q. Did that basically end your
18 involvement in this case?

19 A. For the most part, yes, sir.

20 MR. TIEGER: Okay. Just one
21 moment, Judge. Nothing further, Judge.
22 Thank you.

23 THE COURT: Thank you.

24 CROSS-EXAMINATION

25 BY MR. WHALEN:

1 Q. Officer Rock, you determined that
2 there was an individual that your police
3 department was looking for as a result of the
4 shooting, am I correct?

5 A. I wouldn't say that I determined
6 that. I would say the police department
7 determined that.

8 Q. So you weren't involved in that at
9 all?

10 A. I was certainly not the lead
11 investigator on this.

12 Q. I didn't ask you that. I just
13 asked you if you became aware that they were
14 looking for an individual for that shooting?

15 A. Yes, sir.

16 Q. And it was Kareem Gilbert?

17 A. Yes, sir.

18 Q. Okay. And the person that was
19 disorderly at the scene was by the name of Shawn
20 Gilbert?

21 A. That's correct.

22 Q. Do you know that he was Kareem's
23 brother?

24 A. At the time I did not.

25 Q. Okay. Did you release that

1 information to your investigators later?

2 A. Yes, sir.

3 Q. When Shawn Gilbert was upset and
4 being disorderly, what was he saying?

5 A. I can't recall exactly. It's just
6 kind of the standard, he's upset that this took
7 place in his neighborhood. Nothing too
8 particular.

9 Q. So he was all worked up because
10 somebody had dared to have a shooting in his
11 neighborhood?

12 A. Right outside where he lived, yes,
13 sir.

14 Q. Okay. And when he became so
15 disorderly that you arrested him, put him in
16 cuffs, was he saying anything to you?

17 A. Not really.

18 Q. He didn't have any conversation
19 with you?

20 A. I wouldn't say we had a
21 conversation. I told him several times to quiet
22 down or he would be arrested. Eventually he did
23 listen to me and he did calm down.

24 Q. This man is at the scene of a
25 crime, he's all worked up, he's disorderly, and

1 when you put him in cuffs he doesn't have any
2 conversation with you. when you tell him calm
3 down, what does he say?

4 A. I wouldn't say he said okay, I
5 will, or anything like that, he just eventually
6 did calm down.

7 Q. But, again, you had no
8 conversations with him?

9 A. That's correct.

10 Q. He didn't tell you other than that
11 there had been a killing in his neighborhood
12 that he was upset about anything else?

13 A. No, sir.

14 Q. Now, the person that you saw him
15 having a heated discussion with was Victor
16 Davis?

17 A. That's correct.

18 Q. And Victor Davis was with
19 Mr. Austin that was killed?

20 A. Yes.

21 Q. And did you take any special notes
22 of that fact?

23 A. That information was also passed on
24 to the homicide investigators later.

25 Q. And did you learn why Mr. Gilbert

1 and Mr. Davis were having a heated discussion?

2 A. I believe in speaking with the
3 other investigators they presented me with their
4 theory, but I, myself, did not uncover the
5 reason for this, no.

6 Q. Did it have anything to do with
7 Kareem Gilbert?

8 A. Did the conversation that those two
9 were having?

10 Q. That was relayed to you, yes.

11 A. I believe that was their theory,
12 yes.

13 MR. WHALEN: I have nothing else,
14 Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. TIEGER:

17 Q. Officer Rock, these aren't marked
18 with an exhibit number yet, but I'm going to
19 show you, and we will mark these at some point,
20 but these photos, the one of the larger man in
21 dreadlocks laying dead in the street and closer
22 up of his face, is that the individual you
23 identified as Victor Davis that you saw on the
24 scene of the Austin murder?

25 A. Yes, sir.

1 MR. TIEGER: No further questions,
2 Judge.

3 THE COURT: Thank you, Officer.

4 You may step down. Thank you for your
5 testimony. Is he released or do you want
6 him to remain?

7 MR. TIEGER: He can be released.

10 || THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 || (witness excused.)

13 THE COURT: Next witness?

14 MS. SHANAHAN: State will call
15 Detective Avant.

16 THE COURT: Officer, step up and
17 I'll swear you in. Up to the podium.

18 || Raise your right hand.

19 DETECTIVE RON AVANT,
20 having been first duly sworn, was examined and
21 testified as follows:

22 MS. SHANAHAN: Please have a seat.

23 DIRECT EXAMINATION

24 || BY MS. SHANAHAN:

25 Q. Detective, please state and spell

1 your last name for the record.

2 A. My name is Ron Avant. A-V, as in
3 Victor, A-N-T.

4 Q. And how are you employed?

5 A. I'm employed with the City of
6 Cincinnati Police Department assigned to CIS.
7 I'm a polygraph examiner.

8 Q. Okay. How long have you been with
9 the City of Cincinnati Police Department?

10 A. Twenty-four years now.

11 Q. And how long have you been assigned
12 to the CIS Division?

13 A. Eleven years.

14 Q. And what does CIS stand for?

15 A. Criminal Investigation Section.

16 Q. Okay. Have you been a polygraph
17 examiner that entire time?

18 A. Yes, sir.

19 Q. The full 11 years?

20 A. Yes.

21 Q. What type of training, if any, did
22 you receive to do that type of a job?

23 A. We were sent down to Atlanta,
24 Georgia where we learned how to do not just
25 polygraph itself, but we have learned a little

1 bit of psychology, physiology, pretty much those
2 two subjects and combine them all together. We
3 learn how to do interrogations and interviews as
4 well.

5 Q. Are you required to do sort of like
6 continuing education --

7 A. Yes.

8 Q. -- to maintain your certificate?

9 A. Yes, we are.

10 Q. Okay. And what is required of you?

11 A. Every two years we go and attend
12 classes, different states throughout the United
13 States, and we would receive a certificate
14 saying that we completed a certain amount of
15 hours of training.

16 Q. And you have maintained your
17 certificate to be a polygraph examiner?

18 A. Yes, through the American Polygraph
19 Association.

20 Q. Okay. And currently are you
21 working with CPD as a polygraph examiner?

22 A. Yes.

23 Q. Was that the same job that you were
24 holding back in October of 2008 through 2009?

25 A. Yes, I was.

1 Q. okay. Do you know a person by the
2 name of victor Davis?

3 A. Yes, I do. He's a friend of mine.

4 Q. okay. How was it that you know he
5 had -- how did you become friends?

6 A. Victor and I went to Woodward High
7 School together from 1980 to 1984. We were
8 classmates.

9 Q. And did you maintain any contact
10 with victor after he graduated high school?

11 A. Actually, no. Victor had left and
12 went to the military and I hadn't seen him in
13 years.

14 Q. okay. when was -- prior to his
15 death, when was the most recent time that you
16 saw Victor or the first time that you saw Victor
17 prior to his death?

18 A. It was the early part of October.

19 Q. Okay. And where was it that you
20 saw him?

21 A. We were at Golden Coral. I know it
22 was good to see him.

23 Q. Did you speak to him at that time?

24 A. Sure did. We spoke, talked for a
25 long time.

1 Q. Did you exchange information at
2 that time?

3 A. Yes, I gave him my cell number and
4 he gave me his cell number.

5 Q. Okay. I'm going to show you what's
6 not yet marked but photographs that have been
7 referenced.

8 MR. WHALEN: Your Honor, so we
9 don't end up having a mix-up, have you
10 got them marked now?

11 MS. SHANAHAN: Yes. Yes. Well,
12 they are not marked yet because we want
13 them as a series. It's just easier.

14 THE COURT: They will be marked?

15 MS. SHANAHAN: They will be marked.

16 THE COURT: Do you want them marked
17 now?

18 MR. WHALEN: I would.

19 THE COURT: They'd rather not mark
20 them now.

21 MR. WHALEN: I understand that,
22 but --

23 MS. SHANAHAN: That's fine. It's
24 not a problem. I was just trying to keep
25 all the photographs together, Judge.

1 THE COURT: So that will be State's
2 Exhibit?

3 MS. SHANAHAN: One and two. Thank
4 you, Judge.

5 (State's Exhibit Numbers 1 and 2
6 marked for identification.)

7 Q. I'm sorry. I'm showing you what's
8 now been marked as State's Exhibits 1 and 2.
9 Are you familiar with the person that is
10 depicted in those photographs?

11 A. Yes, I am.

12 Q. And would you please tell the Court
13 and ladies and gentlemen of the jury who that
14 is?

15 A. That's my friend Victor Davis.

16 Q. Okay. Detective Avant, when is the
17 next time you heard from Victor after speaking
18 to him at the Golden Coral?

19 A. Victor called me October 18th.

20 Q. And when he called you, did you
21 talk to him, or did he leave you a message?

22 A. I talked to him.

23 Q. And what did he say, if anything?

24 A. He had told me about a homicide
25 that he had witnessed. And he had stated that

1 he had went down to CIS the night it happened,
2 but he had told the investigator he didn't know
3 what happened. And he thought about it, and he
4 wanted to talk to the investigators about it
5 because a friend of his was killed, and he
6 wanted to do his part and be a witness and talk
7 to the investigator to let him know the truth of
8 what happened.

9 Q. This was on October 18th?

10 A. Yes, ma'am.

11 Q. They called and told you this?

12 A. Yes.

13 Q. Ultimately, were you able to
14 determine who the murder was and who it was
15 assigned to?

16 A. Right. It turned out it was --
17 yeah, I talked to CIS. I called them up right
18 away and I gave his number to the investigators
19 so they can call him and talk to him and get the
20 information.

21 Q. Okay. And do you know whether or
22 not Victor Davis went and spoke with Detective
23 Schare and Ballman?

24 A. Yes, he did.

25 Q. Okay. When was the next time that

1 you spoke with Victor Davis?

2 A. Well, Victor had called me pretty
3 much afterwards, we had spoke back and forth.
4 And then he started calling me about people, the
5 family members are starting to threaten him
6 because they found out that he had spoke with
7 the investigators.

8 Q. So when you say that there were
9 calls back and forth, there were multiple times
10 between the 18th and his death that you spoke to
11 Victor?

12 A. Right. Yes, I did.

13 Q. And each of those times -- on each
14 of those times did he express concern about the
15 threats that he was receiving?

16 A. Not immediately at first. But as
17 time went on, a couple days later, yes, he
18 started talking about the threats that he was
19 starting to receive from Kareem's mother and
20 other family members, because --

21 Q. From his mother and who else? I'm
22 sorry.

23 A. Other family members.

24 Q. Okay. Okay. Did you talk to
25 Victor Davis on October 31st?

1 A. Yes, I did.

2 Q. And what did that conversation
3 entail?

4 A. Well, he was still talking about
5 the threats, and I had told him he needs to
6 leave from downtown because I could hear the
7 fear in his voice. He said that it's getting
8 hot and he was very afraid, and I told him he
9 needed to leave.

10 Q. Was Victor Davis a proud man,
11 Detective Avant?

12 A. He was. He was.

13 Q. He served in the military; is that
14 correct?

15 A. He served in the military. He was
16 a very good guy, very good friend of mine.

17 Q. Had he fallen on rough times at
18 this point?

19 A. You know, I don't know. I knew he
20 grew his hair longer, because Victor was always
21 a clean-cut guy in high school. But I
22 understand when you get out of the military you
23 want to be a civilian, you want to grow your
24 hair, and that's what he did.

25 Q. Okay. Who was he staying with, if

1 you know, down in this area?

2 A. I believe he was staying with his
3 sister at the time.

4 Q. Did he talk to you at all about his
5 sister or her willingness to go along with him
6 and get out of downtown?

7 A. No, I don't think she wanted to
8 leave, but I told him that he needed to leave
9 because the danger was -- the threats were
10 towards him.

11 MS. SHANAHAN: okay. One moment,
12 please. Thank you, Detective. Nothing
13 further at this time, Your Honor.

14 THE WITNESS: okay.

15 CROSS-EXAMINATION

16 BY MR. WHALEN:

17 Q. Officer Avant, do you own any real
18 estate down in Cincinnati?

19 A. I did. I owned the two-family
20 rental in Avondale on Hearne Avenue.

21 Q. Do you still own it?

22 A. No, I sold it.

23 Q. Was a woman by the name of
24 Leshuande Ramsey ever a client of yours?

25 A. Yes.

1 Q. And how did you know her?

2 A. Just as a landlord/tenant.

3 Q. Okay. And did a gentleman seated
4 at counsel table here, do you know him?

5 A. Yes, he actually was the boyfriend
6 of my tenant.

7 Q. Okay. And at any time did you and
8 Leshuande Ramsey get in a dispute?

9 A. No. Just typical landlord/tenant
10 discussions about rent, payment of rent, but
11 nothing -- nothing -- never did anything legal.
12 I never filed any eviction papers because she
13 said she was going to try to leave, and I was
14 being very lenient with her in allowing her --
15 to give her time to move.

16 Q. And did you tell her that you were
17 going to make her and her fiance's life a living
18 hell?

19 A. Oh no.

20 Q. Never said that?

21 A. Never said that.

22 MR. WHALEN: Okay. I have nothing
23 else, Your Honor.

24 THE COURT: Anything else from this
25 witness?

1 MS. SHANAHAN: No, Your Honor.

2 Thank you.

3 THE COURT: Thank you, Officer.

4 You may step down. Thank you for your
5 testimony. And is this detective
6 released? Do you want this officer to
7 remain?

8 MR. TIEGER: He's free to leave,
9 Judge.

10 THE COURT: Officer, you're
11 released. Thank you for your testimony.

12 THE WITNESS: Thank you ma'am.

13 (witness excused.)

14 MR. WHALEN: Your Honor, could we
15 approach the bench for a minute?

16 THE COURT: Yes.

17 (Unreported sidebar conference.)

18 THE COURT: Bring in the third
19 witness.

20 MR. TIEGER: Shall I call the next
21 witness, Judge? Detective Ballman.
22 Judge, he's down at the end of the hall.
23 Let me grab him real fast.

24 THE COURT: Officer, will you step
25 forward and raise your right hand, be

1 sworn please?

2 DETECTIVE KURT BALLMAN,

3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TIEGER:

7 Q. Good afternoon, sir.

8 A. Good afternoon, sir.

9 Q. Could you please tell us your name
10 and spell your last name?

11 A. Detective Kurt Ballman, K-U-R-T,
12 B-A-L-L-M-A-N.

13 Q. What's your occupation?

14 A. I'm a police officer with the city
15 of Cincinnati assigned to the Homicide Unit.

16 Q. How long have you been a Cincinnati
17 police officer?

18 A. Approximately 20 years.

19 Q. And what did you start out doing as
20 a Cincinnati police officer?

21 A. Same as every other officer, start
22 out on patrol. Well, recruit at the academy.
23 Once you graduate, you're a patrol officer.

24 Q. How long have you been in homicide?

25 A. Eight years.

1 Q. okay. what are the basic duties of
2 a homicide officer?

3 A. we investigate homicides, suicides,
4 baby deaths, kidnaps, police interventions, in
5 general, death investigations.

6 Q. And, specifically, do you go to
7 scenes?

8 A. Yes.

9 Q. And are you where the evidence is
10 collected at scenes as well?

11 A. Yes.

12 Q. And do you try to solve a murder?

13 A. Yes.

14 Q. So to speak, if you have got an
15 individual that is dead at the scene and nobody
16 is around, you try to figure out who did it?

17 A. Yes.

18 Q. Do you work with the coroner's lab
19 as well?

20 A. Yes, we work with the coroner's
21 office.

22 Q. Do you try to develop witnesses?

23 A. Yes.

24 Q. And do you work with witnesses over
25 the course of an investigation and try to secure

1 their appearance and make sure they're present
2 for court?

3 A. Yes.

4 Q. Is there a general problem, if
5 you're aware, Detective Ballman, with locating,
6 finding and keeping witnesses involved in these
7 type of homicide cases?

8 A. Yes, there is.

9 Q. Could you describe that for the
10 jury.

11 A. We -- my office, we call it witness
12 management. Quite frequently, it's difficult to
13 get people to come forward to have them tell the
14 truth. Generally, there is a fear out there on
15 the streets, they say, to testify in homicide
16 cases. Once you do have a witness that is
17 cooperative, he or she may come in to all kinds
18 of or meet with all kinds of resistance out in
19 their neighborhoods.

20 One of the most horrible things,
21 apparently, to be these days is a snitch. So
22 there is a lot of pressure not to be a snitch.
23 So even from people that may not -- may or may
24 not have anything to do with the case, this
25 person may feel some social pressure not to

1 snitch, not to tell. They get kind of branded.
2 often we have to move witnesses
3 because they are receiving threats, or they have
4 fear of retaliation. So it gets kind of
5 difficult to keep them in the loop after they
6 have assisted us in a case.

7 Q. And in a community like
8 Over-the-Rhine that I know is primarily a lot of
9 good people, but there are several very
10 dangerous people down there.

11 A. There is several dangerous elements
12 in that neighborhood.

13 Q. when an individual identifies
14 himself as a witness, you and I and everybody
15 goes home. That witness usually has to remain
16 in the community with that person, either
17 themselves or their family?

18 A. Their family, their friends, gang
19 members, whoever, and those are the people that
20 are usually, as we say, stepping on them.

21 Q. And did you respond to a homicide
22 in the early morning hours of 10/16 of '08?

23 A. Yes, sir.

24 Q. And my understanding is that the
25 homicide occurred shortly after one in the

1 morning. Do you know how long it took you to
2 get to the scene?

3 A. About 20 to 25 minutes. Once we
4 were there, I think approximately at 1:25.

5 Q. Who did you respond to?

6 A. My partner at the time, Detective
7 Jeff Schare.

8 Q. And were you and Detective Schare
9 the lead investigators on what turned out to be
10 the Brian Austin homicide?

11 A. Yes, we were.

12 Q. What did you do first at the scene?
13 I want you to describe for the jury for us.

14 A. We arrived, we parked our car near
15 Vine at Elder, walked down to the scene and was
16 met with some of the initial responding
17 officers, the uniformed guys, they were there
18 with some of our sergeants and criminalists.

19 Once they arrived, we initially
20 walked through noticing physical evidence in the
21 crime scene area. Also the victim's body across
22 the street was still present at the scene and
23 just generally took notes on the scene and the
24 victim.

25 Q. Why doesn't -- why is it important,

1 Detective Ballman, for a homicide investigator,
2 for you to go to a criminal scene instead of
3 just looking at photos later on?

4 A. It's kind of an organic process.
5 You're actually -- humans see it three
6 dimension. You actually are on this scene and
7 it kind of brands your memory a little bit
8 better that you're there, your seeing the shell
9 casings lie, you're seeing where the body is,
10 you're seeing blood spatter. So it's just --
11 pictures doesn't always give you the best or
12 truest experience.

13 Q. Okay.

14 A. You can document with them, but --

15 Q. Okay. And did you see the body of
16 Brian Austin there at the scene?

17 A. Yes, I did.

18 Q. And then a homicide, where fire has
19 done everything they can to save an individual's
20 life, is the body left then on the scene, at the
21 scene in the condition that it's in at the time
22 that the police would respond?

23 A. Not always left in the condition.
24 Sometimes fire will move the body in attempts to
25 rescue them or render a -- and I think that was

1 the case in this situation. The way we found
2 the body on his back was after fire had worked
3 on him because he was originally, I'm told,
4 found on his left side.

5 Q. Other than maybe trying to put pads
6 on him or do something to save his life at the
7 scene, cut his shirt open or something like
8 that, the general area would be the same?

9 A. Yes, sir.

10 Q. And then that's documented for
11 homicide and photos are taken and so forth?

12 A. Yes, sir.

13 Q. Did you see any civilian people
14 hanging around or in the area?

15 A. There was quite a bit of civilian
16 people coming down. We had a little bit of a
17 crowd gathering towards Vine Street at Elder.

18 Q. And did somebody catch your eye at
19 the scene, Detective Ballman?

20 A. Originally, after I had viewed the
21 scene, taken my preliminary notes, I was walking
22 back toward the area of Vine Street just to
23 interview persons in the group or crowd. We had
24 information that there was a woman wearing a
25 tye-dyed shirt and flower pants that may have

1 seen the incident, and I was attempting to
2 locate her at the time.

3 Q. And what, if anything, unusual did
4 you see when?

5 A. I did find the woman. She was very
6 uncooperative. She was absolutely kind of upset
7 that she talked to a police officer in front of
8 the crowd, like I was singling her out.

9 Q. Did you ever see anybody that you
10 felt was in a confrontation with another
11 individual?

12 A. Yes, I did. There was a young man
13 I also attempted to talk to along the side of
14 the building, on the north side, and he didn't
15 want to speak to me either.

16 As I crossed the street to speak to
17 the other side on the south side of the group
18 where I believe the woman was, she didn't want
19 to talk. I was heading back down to go on the
20 scene when across the radio an officer reported
21 that he had a subject that might be involved in
22 the incident, or was a witness to the incident,
23 and they were up by the bank or the credit union
24 which was on Vine Street right at the top of
25 Elder where Elder dead ends.

1 So I walked down there and two
2 individuals, one Victor Davis and another one
3 was identified as Shawn Gilbert.

4 Q. And did you know Victor Davis
5 before this, Detective Ballman?

6 A. No, I did not.

7 Q. Was he a larger man with
8 dreadlocks?

9 A. Yes.

10 Q. And did you know Shawn Gilbert
11 before this at all?

12 A. No.

13 Q. What drew your attention to Mr.
14 Gilbert and Mr. Davis?

15 A. I believe Mr. Gilbert was trying to
16 influence Mr. Davis to not cooperate with the
17 police. So I had, just to kind of intimidate
18 him, I had the officer get his information, and
19 then I had Mr. Davis placed in the police car
20 and asked that he be transported to CIS.

21 Q. In your training, background and
22 experience, Detective Ballman, what made you --
23 what lead you to the opinion that you just told
24 the jury, that Shawn Gilbert was trying to
25 influence or intimidate Mr. Davis?

1 A. It's not uncommon at our scenes to
2 have somebody who doesn't necessarily have to be
3 involved, but he's just generally there working
4 as kind of a cooler, and that's what I kind of
5 felt at the time he was doing is just kind of,
6 you know, don't snitch, you know, keep your
7 mouth shut, just kind of intimidating him.

8 I didn't know at that particular
9 moment what any of their connection was, what
10 was going on, other than the fact that the
11 officer reporting that Mr. Davis was a possible
12 witness or involved in the incident.

13 Q. And in relation to where the body
14 was, it was on Elder Street, is that correct,
15 Detective Ballman?

16 A. Yes, it was in front of 19 Elder
17 Street on the outside.

18 Q. And where would the body of Brian
19 Austin be in relationship to the corner of
20 Republic and Elder?

21 A. Probably half a block, if that,
22 from the corner of Republic and Elder. The
23 corner of Republic and Elder would have been
24 east of the body.

25 Q. Across the street and a little bit

1 further up?

2 A. Yes.

3 Q. And did you get Shawn Gilbert's
4 name then, Detective Ballman?

5 A. Yeah, I just -- I just got it in
6 passing.

7 Q. And Victor Davis was put in a
8 uniform police officer's car?

9 A. And transported to CIS.

10 Q. And did you eventually speak to
11 Victor Davis at your headquarters downtown?

12 A. Yes, we did.

13 Q. And could you describe the
14 interview process for the jury of Mr. Davis?

15 A. we brought him in and interviewed
16 him. Generally asked him if he needs any water
17 or anything to eat, things like that, try to
18 make him as comfortable as possible. And then
19 we began to talk to him about what his
20 involvement may or may not have been in the
21 incident.

22 Q. And did he give a statement to you
23 about what he saw?

24 A. Yes, he did. He said that he had
25 been there with the victim, Brian Austin, that

1 an individual had come around the corner, placed
2 a gun to Brian's head, pulled the trigger. It
3 didn't go off when he came around the corner, he
4 said something to the effect of, you know,
5 you're going to have to give me something, and
6 then he says the gun didn't work, Mr. Davis then
7 says he takes off fleeing.

8 The individual put the gun into
9 action, shoots Brian in the chest and then
10 continues to chase him across the street firing
11 at him. As he's fleeing from the north side to
12 the south side of the street, Victor Davis says
13 he looped around, ran around a car, ran towards
14 Vine Street, looped around and came back to
15 where Brian had fallen and they had called 911.

16 Q. Did Mr. Davis indicate to you,
17 Detective Ballman, that prior to the shooting
18 there was some interplay between Mr. Austin and
19 the shooter that involved Mr. Austin hitting or
20 striking the shooter with a meatball sub?

21 A. Actually, that was in the next
22 interview. He just kind of -- we kind of
23 started hitting him on who the guy was, we felt
24 like he might know who the shooter was, and he
25 was a little bit misleading at first. He was

1 telling us he was a young guy, under 25. And he
2 could describe the gun, and the gun was in his
3 right hand, but he was really being kind of
4 evasive that evening, and we kind of felt like
5 he was intimidated and wasn't going to kind of
6 tell us everything.

7 Q. Did you feel that he really knew
8 the identity of the shooter of Mr. Austin?

9 A. Yes, we did.

10 Q. But he indicated that he didn't
11 know who it was at all?

12 A. Yes, he described him as a young
13 guy.

14 Q. But did not know him?

15 A. He said he might be able to
16 identify him later.

17 Q. Okay. He was at that point the
18 only known eyewitness to the death of Mr.
19 Austin. Nobody else came forward at all; is
20 that correct?

21 A. That's correct.

22 Q. And during the whole course of your
23 investigation of all the people at the scene,
24 hanging out that morning, present there, upset,
25 basically all the hangers on, nobody ever came

1 forward to say they saw one thing other than
2 Mr. Davis?

3 A. That is correct.

4 Q. And when he told you, Mr. Davis,
5 that your feeling that he was reluctant or
6 didn't really want to say what happened, was
7 that unusual, if at all?

8 A. No. It occurs several -- quite
9 frequently in homicide cases.

10 Q. Why it is not unusual, Detective
11 Ballman?

12 A. Just people are frightened or
13 intimidated and they don't want to be the one
14 that has to put the finger on a murderer, and
15 they don't want to have to come to court, and
16 they don't want to have to be branded a snitch
17 or all kinds of reasons.

18 Q. And did you give Mr. Davis your
19 business card, Detective Ballman?

20 A. Yes, I did.

21 Q. And that has your name, you are
22 homicide and your phone number?

23 A. Yes, sir.

24 Q. And between the 16th of October,
25 which would be the date Mr. Austin was murdered,

1 and the next day or two, was information
2 developed that Kareem Gilbert or Little Red was
3 the shooter?

4 A. Yes.

5 Q. And was a photo spread put together
6 with Kareem Gilbert in this photo spread?

7 A. Yes, my partner, Jeff Schare,
8 contacted the Hamilton County Juvenile Court
9 System and they constructed a photo lineup for
10 us.

11 Q. And at some point did you and
12 Detective Schare receive a call about Victor
13 Davis on 10/18 of '08?

14 A. Yes. Ron Avant is a detective that
15 works as a polygrapher in our office, and he
16 called Detective Schare and said he was a high
17 school friend of Victor Davis, and that Victor
18 Davis had contacted him and told him that he
19 didn't tell the police the complete truth, and
20 that Ron had talked to him, and that he wanted
21 to come back in and tell us what had happened.

22 Q. So moving then to just a couple
23 days later, on October 18th, did you have
24 another interview with Mr. Davis?

25 A. Mr. Davis came in that afternoon

1 sometime after 4:00, I believe, and we
2 re-interviewed him.

3 Q. And during that second interview of
4 Mr. Davis, Victor Davis, did he indicate to you
5 that he knew who the shooter of his friend was?

6 A. Yes, he did.

7 Q. And who did he say it was?

8 A. Well, we kind of generally went
9 through the incident. At that point Detective
10 Schare read him the witness -- the thing we read
11 for photo lineups, and he went through the
12 lineup and he picked out Number 1 and said that
13 was Little Red, the person that had murdered or
14 shot Brian Austin.

15 Q. And Little Red, the person he
16 picked out, did that turn out to be Kareem
17 Gilbert?

18 A. That was the photo of Kareem
19 Gilbert.

20 Q. Did he just know him by Little Red?

21 A. Yeah, pretty much so because that's
22 how he referred to him, but it turns out that
23 they were very well acquainted. They are next
24 door neighbors. They basically -- Mr. Davis's
25 sister stayed in the apartment building, same

1 apartment building or nearby apartment building
2 as Mr. Davis's sister who he was staying with.

3 Q. Are you familiar with where this
4 apartment building is, Detective Ballman?

5 A. At the corner of Republic and
6 Elder.

7 Q. What's the -- we went on a jury
8 view a couple days ago, actually yesterday I
9 guess, and we viewed a couple spots on Elder
10 Street, and then we just walked around the
11 corner, there is a vacant lot and there is an
12 apartment building, I believe, 1802, 1804?

13 A. 1802 is across street from the --

14 Q. Is that where Mr. Davis lived?

15 A. Yes.

16 Q. Is that the same building or area
17 that Kareem Gilbert and Kareem Gilbert's mother
18 lived at?

19 A. Yes.

20 Q. And also Davis's sister?

21 A. Yes.

22 Q. So the suspect that he named in the
23 Austin shooting stayed in the same building as
24 the witness?

25 A. Yes.

1 Q. what did you do next at the scene,
2 Detective Ballman?

3 A. At the scene?

4 Q. I'm sorry. After you identified
5 Mr. Gilbert, Kareem, Little Red as the shooter,
6 were murder warrants put out for Kareem Gilbert?

7 A. Yes.

8 Q. And that would be on or about
9 October 18th of 2008?

10 A. Yes. My partner conferred with the
11 prosecutor's office, and once we had done that
12 we went ahead signed the murder warrants based
13 on Mr. Davis's identification.

14 Q. After October 18th, did you or
15 other detectives or other people try to look for
16 Kareem Gilbert to try to arrest him for the
17 murder of Brian Austin?

18 A. Yes.

19 Q. And what were the results of that
20 search?

21 A. SOFAST was sent out, that's a kind
22 of a fugitive apprehension team. They had tried
23 to locate him several times at his mother's.
24 It's at 1802 Republic, a couple times at his
25 father's address on Hearne. We received rumors

1 that he had gone to New York to be with an
2 uncle, basically the family shipped him out of
3 state, which later turned out not to be true.
4 And I believe he was essentially picked up at a
5 relative's address somewhere on the west side of
6 town.

7 Q. And then he was eventually caught
8 on December 31st of 2008?

9 A. Yes, sir.

10 Q. And during this time, my
11 understanding, Detective Ballman, that a white
12 t-shirt was located at the crime scene?

13 A. Yes. And that became very
14 significant in the case. We collected as part
15 of the crime scene at the time it had pizza
16 sauce or spaghetti sauce or some sort of red
17 sauce on the shirt.

18 Q. Yeah, that's relevant, because I
19 interrupted before when I was talking about
20 Davis's interview about what had preceded the
21 shooting.

22 A. Once Victor Davis had identified
23 Kareem as the shooter, he went into more detail
24 on what happened that evening. He and Brian
25 Austin had hooked up maybe around 12:30 that

1 night. They had driven over to Subway in lower
2 Fairmount that's part of a BP Station, bought
3 some food and drink and come back to Elder
4 Street to just sit and talk in front of the
5 store and eat their sandwiches and drink their
6 drinks.

7 Mr. Davis told us that Little Red
8 appeared and began to harass Brian Austin,
9 putting his hands into his neck or something.
10 And at that time Brian Austin had pushed Little
11 Red and hit him upside the head with his
12 meatball or his hoagy sandwich.

13 At that point Little Red left the
14 scene momentarily and returned with a black
15 handgun, put it up to Brian Austin's head. He
16 told us Brian Austin made some statement that
17 basically don't do this. He pulled the trigger,
18 it clicked, he worked the action again, put the
19 gun back into action and fired and shot Brian in
20 the chest.

21 At that time Mr. Austin, according
22 to Mr. Davis's statement picks up -- it's before
23 he's running across the street as Mr. Gilbert is
24 repeatedly firing at him. Mr. Davis says he
25 runs behind a Cadillac Escalade or larger

1 vehicle like a Cadillac SUV and flees toward
2 vine Street, but then the story is the same, he
3 returns to aide Brian and he calls 911.

4 Q. And going back to the crime scene,
5 did it turn out later on in the investigation
6 that this t-shirt was collected and DNA was done
7 and it was Kareem Gilbert's DNA on a white
8 t-shirt that was lifted at the scene?

9 A. Yes.

10 Q. And that t-shirt also had red
11 sauce, that would be consistent with a sub that
12 was being used at the time?

13 A. Yes.

14 Q. Now, as far as Victor Davis, did
15 you become aware between October 18th of 2008
16 and the date of his death, October 31st, that
17 anything was done to try to help him get away
18 from that area?

19 A. Yes. when he came in on the second
20 interview on the 18th, he was very emphatic that
21 his and his sister needed some sort of
22 protection. we assured him -- unfortunately, we
23 were working nights at the time, and that is a
24 little bit of a handicap for us, because a lot
25 of our facilitators, a lot of our, you know,

1 like our victim advocate works during the
2 daytime, so we have a little bit of a delay in
3 how we can get in touch with them.

4 But we assured Victor Davis that we
5 would get in touch with our victim's advocate
6 and try to have him and his sister moved from
7 that location to a more safe location.

8 Q. And do you know if your victim
9 advocate ever met with Mr. Davis?

10 A. No. At one point he kind of
11 refused to be moved at that point which was a
12 little bit strange.

13 Q. Do you know why he refused to be
14 moved?

15 A. I do not, but he was emphatic
16 taking his sister, protecting her, so I think
17 that was his motivation at the time. He was
18 afraid that if he left, or if he didn't stay at
19 the residence on Elder, or excuse me on
20 Republic, that they, Kareem's family or Kareem,
21 may try to get to him through his sister.

22 Q. Were you involved at all in the
23 investigation in the death of Victor Davis,
24 Detective Ballman?

25 A. Just peripherally because it was

1 involved with my Brian Austin case. Victor
2 Davis again was my eyewitness.

3 Q. And Detective Luke and Detective
4 McGuffey were the primary investigators at
5 Victor Davis's homicide.

6 A. Yes.

7 Q. And are you aware that when the
8 body of Victor Davis was found in the street
9 right in front of his apartment building, your
10 card was on his body?

11 A. Yes.

12 MR. TIEGER: Just one moment,
13 Judge. No further questions, Judge.

14 MR. WHALEN: Judge, can we approach
15 at sidebar for a moment?

16 (Unreported sidebar conference.)

17 THE COURT: We are going to take a
18 comfort break for all of us. And so,
19 ladies and gentlemen of the jury, you
20 must remember the admonitions I gave you
21 not to begin to discuss this case. You
22 have heard that several times now, and
23 you may break. And if you do believe you
24 do have to come back at three, you need
25 to be back in your seats at 3:15. It is

1 now 3:00. 3:15 in your seat. And Scott
2 needs to collect the notes, please. we
3 have to figure out a system for all that.

4 Can you put your juror number on there?

5 Do you all know your numbers? Scott can
6 help you identify yourself by number.

7 Number 1 is Greg Obst, Number 2 is
8 Lena McKinney, 3, Beverly Messerschmitt,
9 4 is Sherri Kemper, 5 is Scott Shelton, 6
10 is Brian Fitzgerald, 7 is Edward Cisko,
11 8 -- wait a minute. I'm not sure if that
12 name was correct. Edward Cisko. Eight
13 Sally Coffman, 9 David Burck, 10 Jessie
14 Ricketts, 11 Christine Bessey, 12 Michael
15 Burke and alternate one is Gary Drury.
16 Alternate two Edward Korb and alternate
17 three, Erika Kellogg.

18 So remember your number and put
19 that on the note taking and we are
20 excused. Officer, you are also excused.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: And come back, it looks
23 like now 3:20.

24 (The Jury leaving the courtroom at
25 3:05 p.m.)

1 (Recess.)

2 (The jury entering the courtroom at
3 3:25 p.m.)

4 THE COURT: All right. You may be
5 seated, and I believe we are ready for
6 cross. Counsel, you ready?

7 MS. WILLIAMS: Yes.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Detective Ballman, you said that
12 you had heard of a heated discussion between Mr.
13 Davis and another individual from officers that
14 had been on the scene?

15 A. When I arrived up there, the
16 officer had called that he had somebody
17 involved. When I got up there, it appeared that
18 Mr. Davis was being intimidated by the other
19 individual known as Shawn Gilbert.

20 Q. Okay. You actually saw this then
21 yourself?

22 A. Yes.

23 Q. Okay. And at that time did he know
24 of Shawn Gilbert as Kareem Gilbert's brother?

25 A. Didn't even have the name Kareem

1 Gilbert. Didn't have any idea of what Shawn
2 Gilbert's connection was to this incident.

3 Q. Okay. When did you learn that
4 information?

5 A. The following day when we received
6 a tip that Kareem Gilbert was our shooter, and
7 at that point the name Gilbert that I had spoke
8 to was Shawn Gilbert at the scene was now
9 relevant.

10 Q. Okay. Did anybody ever look for
11 Shawn Gilbert after that -- after you had
12 learned he was related to Kareem?

13 A. Yes.

14 Q. Was he interviewed?

15 A. Yes.

16 Q. Or questioned?

17 A. Yes, he was.

18 Q. And did he identify anyone as part
19 of that crime?

20 A. He denied being involved, any of
21 his family members being involved and/or being
22 involved in Davis's homicide.

23 Q. When you interviewed Mr. Davis on
24 October 16, 2008, you had stated that he was
25 fearful for his life, correct?

1 A. He was nervous, he was worried
2 about being brought down to the station, yes, he
3 was fearful.

4 Q. Did he make any statements to you
5 about having been homeless?

6 A. Yes.

7 Q. What did he mean when -- or what
8 statements did he make?

9 A. He just told us -- when we asked
10 for his address, he told us he was homeless.

11 Q. And he wasn't homeless at this
12 time, you're meaning from a prior time, correct?

13 A. At the time I took that as he was
14 stating he was homeless at that time.

15 Q. Did he make a statement to you, "I
16 should have stayed homeless"?

17 A. I don't recall, ma'am.

18 Q. I can show you the transcript if
19 that would refresh your memory.

20 A. That would be fine.

21 Q. Line ten, if you could just read
22 that out loud what Mr. Davis stated?

23 A. Starting at Line ten?

24 Q. Yes.

25 A. Do I need to read the predecessor

1 or just --

2 Q. You can just read what they say?

3 A. It says I should have -- I should
4 have stayed homeless.

5 Q. Do you know what he meant by that?

6 A. No.

7 Q. Okay. Detective, you stated that
8 you had interviewed Kareem Gilbert on
9 December 31st --

10 A. Yes.

11 Q. -- of 2008. When you were
12 interviewing him, did he ever state whether he
13 owned or had ever used a firearm?

14 A. I don't recall, ma'am.

15 Q. Okay. Again, I'll refresh your
16 memory here. If you could read that out loud.

17 A. Starting line 20, or --

18 Q. I believe it's 21.

19 A. Okay. He says: I sell crack, but
20 I ain't never thought about doing that and
21 killing nobody, Bro. I just put this on my
22 life, Bro. I ain't about trying to come in,
23 come on, man. It's somebody's life, man. Is
24 that what you needed read?

25 Q. Yes, that one and also Line 21

1 right here.

2 A. Okay. It says: oh, you're all
3 clowning, Bro. I ain't never touched a gun.

4 Q. Thank you. And, again, Detective,
5 who made those statements?

6 A. Kareem Gilbert.

7 Q. So Mr. Gilbert said I ain't never
8 touched a gun, correct?

9 A. According to the transcripts, yes,
10 ma'am.

11 Q. And he stated I sell crack, but I
12 ain't never thought of killing nobody?

13 A. Yes, ma'am.

14 Q. But then you are aware he later
15 confessed to that murder, correct?

16 A. Yes.

17 Q. And is now serving time?

18 A. Yes.

19 Q. So he was not truthful when he was
20 speaking to you?

21 A. No, the first interview he
22 completely denied involvement.

23 MS. WILLIAMS: No further
24 questions. Thank you.

25 THE COURT: Anything else from the

1 prosecution?

2 MR. TIEGER: No, Your Honor.

3 THE COURT: Thank you, Officer.

4 You may step down also.

5 THE WITNESS: Thank you, ma'am.

6 THE COURT: Counsel, you want him
7 to remain?

8 MR. TIEGER: No, Judge.

9 THE COURT: I said counsels, you
10 want him to remain?

11 MR. WHALEN: No, we do not.

12 THE COURT: okay. Thank you.
13 Officer, you are released.

14 (witness excused.)

15 MS. SHANAHAN: The State will call
16 Sergeant Jeffrey Hunt.

17 THE COURT: Officer, please stand
18 and raise your right hand to be sworn.

19 SERGEANT JEFFREY HUNT,
20 having been first duly sworn, was examined and
21 testified as follows:

22 THE COURT: Have a seat there.

23 DIRECT EXAMINATION

24 BY MS. SHANAHAN:

25 Q. Detective, please state your name

1 and spell your last name for the record.

2 A. My name is Jeff Hunt. Last name
3 spelled H-U-N-T.

4 Q. And I apologize. It's Sergeant
5 Hunt, correct?

6 A. It is.

7 Q. Okay. Sergeant, how are you
8 employed?

9 A. I'm employed by the Cincinnati
10 Police Department, and I'm presently assigned to
11 the Southern Ohio Fugitive Apprehension Strike
12 Team.

13 Q. How long have you been with the
14 Cincinnati Police Department?

15 A. Thirty years.

16 Q. During that time you have basically
17 held pretty much every position that there is in
18 the police department up to being in the SOFAST
19 Unit?

20 A. I've had a varied career, yes,
21 ma'am.

22 Q. How long have you been with SOFAST?

23 A. Since its inception, which was in
24 May of '06.

25 Q. And when I'm referencing SOFAST,

1 that's what the common lingo is for the Southern
2 Ohio Fugitive Task Force, correct?

3 A. Yes, it is.

4 Q. And what exactly do you do?

5 A. It's a multi-task force with the
6 United States Marshall service, basically we go
7 out and look for wanted fugitives.

8 Q. okay.

9 A. Focusing on those most violent
10 felonies, first, second and third degree.

11 Q. Okay. Were you called upon by the
12 Cincinnati Police Department to locate a Kareem
13 Gilbert in late 2008?

14 A. Yes, I was.

15 Q. Okay. Tell us about your
16 involvement in this case, please.

17 A. I was contacted by our Homicide
18 Unit who indicated there was signed warrants on
19 Kareem Gilbert for murder and asked us to start
20 looking for him.

21 Q. Okay. Did they provide you a
22 description of Kareem and photographs of him?

23 A. They did.

24 Q. Okay.

25 A. Yes.

1 Q. what did you first do to go search
2 for Kareem Gilbert?

3 A. well, we started our own background
4 investigation, tried to find addresses, verified
5 addresses of family members, that kind of thing,
6 and we focused on his family's residence down on
7 Republic Street.

8 Q. Is that the common protocol in a
9 situation like this where you're dealing with a
10 juvenile and you need to find where they might
11 be?

12 A. Yes. we focus mostly on felonies,
13 that's our best contact for younger persons,
14 juveniles especially.

15 Q. Okay. So what did you first do
16 with this case then?

17 A. we went to the family residence at
18 I believe it's 1806 Republic Street and went up
19 and knocked on the door and asked if we could
20 come inside and spoke to Kareem's mother and
21 other family members.

22 Q. Okay. Did you let them know why
23 you were looking for Kareem?

24 A. we did.

25 Q. Okay. what is it that you told

1 them, the reason?

2 A. I spoke to his mother, his
3 stepfather was also there. We told them that he
4 were looking for him for a homicide.

5 Q. Okay. And was Kareem present at
6 the home at that time?

7 A. He was not.

8 Q. Were they able to give you any
9 information about where he might be?

10 A. No.

11 Q. Were they willing to give you any
12 information about where he might be?

13 A. They provided us with no useful
14 information. They indicated that he had been
15 staying there and they had not seen him for some
16 time and really had no idea where he would go,
17 close friends, girlfriends, other family
18 members.

19 Q. They did not know any of that
20 information?

21 A. They did not.

22 Q. Okay. What did you do then?

23 A. Well, the information we kept
24 receiving was that it was focused down in that
25 area. We continued to check the addresses we

1 had, we tried to locate a father's address, at
2 that time it was Concord, and found out that was
3 a bad address.

4 The CrimeStopper tips that came in
5 indicated that Kareem was down in the Republic
6 area constantly and basically all -- the only
7 thing we could do is continue to check that
8 area, drive around the area as frequently as
9 possible. And we went back to the family
10 address on several different occasions.

11 Q. Okay. And you did regularly patrol
12 that area looking for Kareem?

13 A. We did.

14 Q. And when you went back to the
15 family address, the 1806 address on Republic,
16 did you locate anything on those other
17 occasions?

18 A. No. On several different times we
19 went in, they allowed us to go in and search the
20 residence. One time we found it completely
21 unlocked and open and nobody home. One time I
22 saw his mother walking in the neighborhood. We
23 tried to do surveillance on her, and then she
24 came back around the block and I spoke with her
25 for about 20 minutes.

1 Q. okay. ultimately were you able
2 ever to locate the father of Kareem Gilbert?

3 A. Yes.

4 Q. And who is that person?

5 A. Ruben Jordan.

6 Q. Do you see that person in the
7 courtroom?

8 A. Yes, it's the gentleman sitting at
9 defense table in the brownish striped shirt.

10 MS. SHANAHAN: Your Honor, may the
11 record reflect identification of the
12 defendant?

13 THE COURT: Stipulated, Counsel.

14 MR. WHALEN: We'll stipulate that,
15 Your Honor.

16 THE COURT: All right. Thank you.

17 Q. Detective, what happened when you
18 located Ruben Jordan?

19 A. We went up and talked to Mr.
20 Jordan. He allowed us in the residence. He
21 allowed us to go and search for Kareem. Kareem
22 was not home. We had some conversations. Mr.
23 Jordan told me that Kareem had, in fact, been
24 staying there for a little while and that Kareem
25 was frightened, and they were trying to work out

1 an arrangement for an attorney, and Mr. Jordan
2 left to go get an attorney. while he was gone,
3 Kareem left and he had no idea where he went.

4 Q. okay. ultimately, did you receive
5 information about Kareem's activities down
6 around Republic Street around his mother's home?

7 A. Yes.

8 Q. okay. And what did you do with
9 that information?

10 A. Obtained some information from a
11 confidential source that indicated they had
12 regularly met with Kareem to purchase narcotics
13 from him. I believe it was heroin. They said
14 Kareem was his regular heroin supplier.

15 Q. Uh-huh.

16 A. He described the location that he
17 would always meet Kareem at. He had a phone
18 number for Kareem. we tried to do some
19 background on the information on the phone
20 number on that subject. Finally we were able to
21 set up a controlled meeting to purchase some
22 drugs.

23 Q. And were you able to apprehend
24 Kareem at that time?

25 A. we did. On December 31st, the

1 source arranged a meeting with Kareem on Beekman
2 Street and was able to provide us with a
3 description of what he was wearing. Had
4 numerous officers in the area to stop Kareem as
5 he's walking down the sidewalk.

6 Q. And this was December 31st of 2008?

7 A. Yes, it was.

8 Q. Okay. Backing up to your contact
9 with the defendant, Ruben Jordan, did he know
10 what his son was charged with?

11 A. Yes.

12 Q. Okay.

13 A. Because he said he was going to try
14 to get him an attorney, and he knew it was for a
15 homicide.

16 MR. TIEGER: Okay. Thank you.

17 Nothing further.

18 CROSS-EXAMINATION

19 BY MR. WHALEN:

20 Q. Officer, when you talked to Mr.
21 Jordan, he told you he was trying to get his son
22 an attorney. Did he also tell you that with the
23 attorney they hoped to turn his son in?

24 A. Yes.

25 MR. WHALEN: Okay. I have nothing

1 else.

2 THE COURT: Thank you, Officer.

3 Anything further?

4 MS. SHANAHAN: No, ma'am.

5 (witness excused.)

6 MS. SHANAHAN: Would you like me --

7 I didn't know the time constraints.

8 THE COURT: If you can, if you want
9 him to stay, he has to stay. Released,
10 he may be released.

11 MR. TIEGER: It's fine that he's
12 released, Judge, we have another witness
13 in the hallway.

14 MR. WHALEN: We have no objection.

15 THE COURT: All right. Thank you,
16 officer. You are released. Thank you
17 for your testimony.

18 (witness excused.)

19 MR. TIEGER: State will call Victor
20 Davis, Jr.

21 THE COURT: All right. Sir, please
22 step forward and raise your right hand to
23 be sworn.

24 VICTOR DAVIS, JR.,
25 having been first duly sworn, was examined and

1 testified as follows:

2 THE COURT: Have seat in this chair
3 and turn it around to kind of face the
4 front.

5 THE WITNESS: Okay.

6 DIRECT EXAMINATION

7 BY MS. SHANAHAN:

8 Q. Sir, would you please state your
9 name for the record?

10 A. Victor Warren Davis, Jr.

11 Q. Okay. And, Mr. Davis, do you know
12 a person by the name of Ruben Jordan?

13 A. Yes.

14 Q. How do you know him?

15 A. From the neighborhood, and I used
16 to talk to his daughter-in-law.

17 Q. Okay.

18 A. His stepdaughter.

19 Q. His stepdaughter. I'm going to ask
20 you to take that microphone and just pull it
21 over towards you. It moves around and stuff.
22 Okay. Just it's hard in this room for everybody
23 to hear.

24 THE COURT: I can turn the volume
25 up a little bit.

1 MS. SHANAHAN: Thank you, Your
2 Honor.

3 Q. Sir, it sounds like a silly
4 question, but are you related to the victim,
5 Victor Davis, Sr. in this case?

6 A. Yes, ma'am, that was my father.

7 Q. Okay. And how old are you?

8 A. About 22.

9 Q. And do you have any siblings, any
10 brothers or sister?

11 A. Yes, I do.

12 Q. How many?

13 A. Two brothers and two sisters.

14 Q. Okay. And are you in regular
15 contact with your brothers and sisters?

16 A. Yes, ma'am.

17 Q. Do they live here in town?

18 A. Yes, ma'am.

19 Q. Okay. And how about your mom?

20 A. I talk to her every day.

21 Q. Every day. Okay. Were you living
22 with your mother, or were you living on your
23 own?

24 A. With my mother, back and forth.

25 Q. Back and forth. Okay. Now, what

1 about your dad? Tell us a little bit about him.

2 what kind of man was he?

3 A. A very humble man, and he gave his
4 last to the neighborhood. He would like bend
5 over backwards for everybody, more than he do
6 his kid.

7 Q. When you say "the neighborhood,"
8 what did he consider his neighborhood?

9 A. The downtown Avondale area, like
10 wherever he lay his head at, people is welcome.

11 Q. Did he spend some time in the
12 military?

13 A. Yes, he did.

14 Q. What branch of the military?

15 A. The Army.

16 Q. Okay. And do you know about how
17 long he was there?

18 A. No, I don't.

19 Q. Okay. Do you know if he fought in
20 any wars?

21 A. Desert Storm.

22 Q. Okay. Was he also in Panama?

23 A. Panama?

24 Q. Do you know?

25 A. I don't know.

1 Q. okay. Did your father talk to you
2 about those traumatic issues that he had after
3 the war?

4 A. Yes.

5 Q. okay. Tell us a little bit about
6 that.

7 A. He was just telling me like he
8 would wake up some nights in a cold sweat, just
9 have awful memories and just thinking about
10 things he went through.

11 Q. And yet dealing with all of that he
12 was still a constance presence in the community
13 of helping people out?

14 A. Yes.

15 Q. Okay. And did you ever have any
16 contact with him? Did you ever have regular
17 contact with your dad?

18 A. Yes, ma'am.

19 Q. How often do you think you talked
20 to him?

21 A. Every day. I'm a junior.

22 Q. You're his junior?

23 A. Every day.

24 Q. Did he have a cell phone or a home
25 phone or --

1 A. cell phone, house phone. I'm
2 making contact with my father.

3 Q. okay. Did you see each other a
4 lot, spend time together?

5 A. Yes, ma'am.

6 Q. okay. How about with your sisters
7 and brothers and mom, did they have contact with
8 your dad pretty regularly?

9 A. Yes, my dad would make sure he see
10 his kids. Like he would go to the limit to see
11 his kids.

12 Q. okay. Now, did you learn that your
13 father was the witness to a murder?

14 A. Yes, I did. He called me the same
15 exact night.

16 Q. He called you the night it happened
17 and told you?

18 A. Yes, ma'am.

19 Q. what did he tell you?

20 A. He told me exactly what happened,
21 exactly who did it. He sent me pictures and
22 everything and told me if don't nobody else in
23 the family know him, I do, because I spend more
24 time down there with him.

25 Q. Meaning you spend more time down

1 there with him?

2 A. Yes.

3 Q. So you knew the people that he was
4 telling you about?

5 A. Yes.

6 Q. And who were those people?

7 A. Kareem, they call him Little Red,
8 and Shawn, his brother Shawn, and a couple other
9 people.

10 Q. Okay. And the picture that he had
11 sent you, did you recognize those people from
12 the neighborhood?

13 A. Immediately. Immediately.

14 Q. Immediately. Okay. Was your
15 father nervous about the fact that he knew who
16 these people were that did this? He knew who
17 Kareem was?

18 A. He was nervous because they was too
19 close to him.

20 Q. Okay.

21 A. But he knew it was coming. He knew
22 it. He knew it.

23 Q. What do you mean?

24 A. Like, he made a joke to me one
25 time, and I told him like, don't be mad if I'm

1 dead by the end of the week like.

2 Q. Okay. He had accepted this?

3 A. (Nods affirmatively.)

4 Q. And I know that this is difficult,
5 and you're nodding your head yes, but the court
6 reporter is taking everything down, so take your
7 time, but try to work with us here.

8 THE COURT: In other words, you'll
9 have to make a verbal, if you can.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: You can say yes or no?

12 THE WITNESS: Yes.

13 THE COURT: Rather than just nod
14 your head, if you can verbalize that too.

15 THE WITNESS: Yes, ma'am.

16 Q. Did your father tell you that he
17 was in danger down there?

18 A. Several times. Several times.

19 Q. Several times.

20 A. He had called me right after the
21 murder and told me what had happened, and called
22 me, I think it was like a wednesday, and told me
23 they had came, had seen him outside and had said
24 a few words to him and that he really ain't feel
25 comfortable.

1 Q. okay. So he knew these people were
2 right in his neighborhood and that he had to see
3 them?

4 A. They were actually right next door.

5 Q. Right next door to where he lived?

6 A. Yes.

7 Q. who did he live there with?

8 A. My aunt.

9 Q. okay. Is that his sister, your
10 dad's sister?

11 A. His sister and my little cousin,
12 and my little cousin's father.

13 Q. okay. Victor, how long have you
14 known Ruben Jordan?

15 A. For about a year and a half before
16 it happened.

17 Q. A year and a half before your
18 father's murder?

19 A. About two years.

20 Q. How did you know him?

21 A. From Avondale and from him running
22 around doing drugs and everything like.

23 Q. okay.

24 A. And I knew him from -- I had knew
25 his stepdaughter.

1 Q. You hung out with her?

2 A. We actually used to kick it for a
3 little bit.

4 Q. Uh-huh.

5 A. And like Ruben was a cool guy at
6 first. Like he would see me, if he needed
7 something it come out of my pocket if I got it.
8 If he ask me for a couple dollars, I got a
9 dollar or so for you.

10 Q. Okay. So you had a decent
11 relationship with Ruben?

12 A. Uh-huh. I spoke to him every time
13 I seen him, because I seen him a lot, and he
14 know I talked to his daughter. He knew it.

15 Q. Okay. Another question. Do you
16 see that person that we are referring to as
17 Ruben Jordan in the courtroom?

18 A. Right there.

19 Q. Okay. What was your relationship
20 like with Ruben Jordan when your father was
21 murdered?

22 A. After that, it was no more
23 relationship. I seen him, he keep moving, he
24 wouldn't speak for real, wouldn't say a word
25 other than right before my father got killed, we

1 actually had a conversation.

2 Q. okay.

3 A. After that, this guy wouldn't say
4 nothing to me. He kept moving every time he
5 seen me.

6 Q. okay.

7 A. And he was so I'm sorry, I'm sorry.

8 Q. Well, slow down a minute there.
9 Where was it that you were when he was saying
10 I'm sorry, I'm sorry?

11 A. When he first seen me in the
12 courtroom, because we had came down here to
13 court a couple times before he actually came,
14 and we seen him down here, he basically broke
15 down to me, telling me how sorry he is and that
16 he didn't know that was my father.

17 Q. Did he ask you why you were down
18 here in the courthouse?

19 A. Yes, he did.

20 Q. Okay. And what did you tell him
21 when he asked you?

22 A. Somebody killed my father, I'm here
23 for my father murder case.

24 Q. And what was his immediate reaction
25 when you told him that?

1 A. Basically on my shoulder, like I'm
2 sorry, man, I can't tell you no other way, I'm
3 sorry.

4 Q. okay. why did that strike you --
5 why did that stick with you?

6 A. Because as a man, even if my child
7 did do it, it's only so much I can say sorry.
8 It's only so much I can speak as.

9 Q. okay. And what did you feel like
10 about how Ruben was expressing himself to you?

11 A. He basically express like he did.

12 Q. okay.

13 A. Like I'm about to keep apologizing
14 to a man if I didn't do it, like I see him
15 outside of court and that's the first thing he
16 say to me.

17 Q. okay. Did you see him any other
18 time other than in the courthouse?

19 A. In Avondale almost every day.

20 Q. okay. Backing up to your father
21 and how he was handling the situation as things
22 were heating up down around his neighborhood,
23 did he give you any specific instructions on
24 what he wanted done if something happened to
25 him?

1 A. My father told me earlier that week
2 if he was to die he wanted to be in his blue
3 jeans, his Timberland boots and white t-shirt.

4 Q. okay. Did he have clothes like
5 that?

6 A. when we went up there, after my
7 father had passed, in his room he had a brand
8 new pair of shoes -- a brand new pair of boots,
9 a t-shirt and some pants, blue jeans, he had the
10 whole outfit laid out, socks and drawers.

11 Q. He told you he knew it was coming
12 and it did?

13 A. (Nods affirmatively.)

14 Q. Did you talk to your father on
15 Halloween night of 2008?

16 A. Yes, I did. I had like earlier
17 that night.

18 Q. Uh-huh.

19 A. I had talked to him and he asked me
20 did I need some money? I had told him no. And
21 then after that, he had told me -- I had told
22 him I was going out. He told me to stay in the
23 house, because I really don't too much go out on
24 Halloween. He told me to stay in the house.
25 And as soon as I got off the phone with him, I

1 had received a call about a half an hour later.

2 Q. A half hour later you got a phone
3 call. who called you?

4 A. This girl I knew from downtown.

5 She said I think it's your father down there
6 laying on the ground.

7 Q. She called you and told you your
8 father had been killed?

9 A. Yes.

10 Q. Where were you when that happened?

11 A. I was in Avondale leaving off of
12 his street.

13 Q. Leaving off?

14 A. I was coming right off Hearne, in
15 Avondale.

16 Q. And you got that phone call?

17 A. I got the phone call right at the
18 corner there.

19 Q. What did you do?

20 A. Just broke down and started crying,
21 man. There is nothing I can do.

22 Q. Did you try to go down there at all
23 that night?

24 A. Yes, I did. I went straight down
25 there.

1 Q. And what happened then?

2 A. I seen my father laying on the
3 ground, and that's the hurt, that's the man I
4 looked up to. That was my right hand. I was
5 his junior, he was any senior, like that was my
6 dog.

7 (Witness crying.)

8 MS. SHANAHAN: Mr. Davis, I know
9 how hard this is for you, and I'm sorry.
10 Nothing further.

11 THE COURT: All right. Cross,
12 Counselor?

13 CROSS-EXAMINATION

14 BY MR. WHALEN:

15 Q. Can you go on, Mr. Davis?

16 A. (Nods affirmatively.)

17 Q. Did you have an occasion to go to a
18 funeral home when a friend's parent died?

19 A. Sir?

20 Q. Do you ever occasion to go to a
21 funeral home when a friend's parent died?

22 A. No.

23 Q. Never have. Have you ever gone to
24 any funerals?

25 A. Yes.

1 Q. For who?

2 A. My other -- one of my cousin's
3 friend, I went for his father.

4 Q. And when you saw your good friend,
5 did you go to him and say, man, I'm sorry?

6 A. Huh?

7 Q. Please?

8 A. Yes, but it's only so much I could
9 say sorry.

10 Q. Okay. Now, when you said you were
11 in court and Ruben Jordan told you he was sorry,
12 what were you in court for?

13 A. My father's case.

14 Q. Okay. And who was the defendant in
15 that case?

16 A. His son.

17 Q. Okay. So when he knows his son is
18 in court for killing your father, he comes up
19 and says to you "I'm sorry," did you think that
20 was unusual?

21 A. No, but when you break down to
22 another grown man, that is.

23 Q. Okay. While you were in court, did
24 you get into a shouting match with Shawn
25 Gilbert?

1 A. No.

2 Q. Okay. Did Shawn's mother ever take
3 a restraining order out on you?

4 A. No. Not that I know of. I would
5 have got at least something in the mail. Not
6 that I know of.

7 Q. You didn't get anything?

8 A. Nothing.

9 Q. Okay.

10 A. Excuse me --

11 THE COURT: Actually, there is no
12 question, so at this point there may be
13 another question asked.

14 Q. Sir, was there an investigation of
15 you being involved with a gun and a shooting?

16 A. No.

17 Q. You don't know anything about that?

18 A. No, I do not.

19 Q. Okay. And you never were asked
20 about firing shots at Shawn Gilbert?

21 A. No, but I know -- all I know is I
22 have a restraining order against him, this guy
23 done pulled guns on me several times. Every
24 time I see this boy, he reaching for his
25 waistband. And what he expect, me to keep

1 running? He keep -- like I see him at UDF, and
2 he basically sat in his car and followed me to
3 Avondale with a gun on his waist. I had my
4 two-year-old son in the car with me.

5 Q. Now, we are talking about Shawn
6 doing this?

7 A. Shawn.

8 Q. Okay.

9 A. Shawn.

10 Q. All right.

11 A. And right now, to this day I took
12 my son to daycare in Price Hill. I look -- my
13 friend had to get my attention, because it was
14 snowing outside, he like, Bro, look, there's
15 somebody right there looking all in the car. I
16 look up, he takes his hood off and it's Shawn.

17 Q. Okay.

18 A. And he been doing the same exact
19 think, reaching in his pocket.

20 MR. WHALEN: Okay. Thank you.

21 MS. SHANAHAN: Nothing further.

22 THE COURT: Thank you, sir, for
23 your testimony. You may step. You may
24 step down.

25 (Witness excused.)

1 MR. TIEGER: Judge, this may be a
2 logical place to break because the next
3 witness is fairly long, and since we know
4 there are time constraints.

9 || MR. WHALEN: Yes. Yes.

15 Meanwhile, I'll remind you of the
16 admonitions not to speak or to think or
17 to come to any conclusions about this
18 case. And if you will just leave your --
19 actually we have decided that the logical
20 thing to do is for you to just leave your
21 writing pads on your chairs. That way
22 you'll also know it's yours and we will
23 also know who they belong to. who
24 belongs to what notebook.

25 || And with that, we are adjourned for

1 the day.

2 (The jury leaving the courtroom at
3 4:00 p.m.)

4 THE COURT: Okay. Counsel, is
5 there anything else before we adjourn for
6 the day?

7 MR. TIEGER: Did we tell them,
8 Judge, ten?

9 THE COURT: 10:00 a.m. And that
10 may mean 10:30.

11 MR. TIEGER: That's fine.

12 THE COURT: 10:00 a.m.

13 MR. TIEGER: The detectives are out
14 there, so they will take control of it.

15 (Proceedings continued in progress
16 until January 14, 2011.)

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